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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,493	12/05/2003	Bernd Becker	9003-287US (PC 02 099 B U	9725
570	7590	11/16/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,493

Applicant(s)

BECKER, BERND

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-7 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II in the reply filed on 17 August 2005 is acknowledged. The traversal is on the ground(s) that the cap cannot be inserted into the opening because the shape of the edge region does not permit such insertion. This is not found persuasive because the apparatus claim does not limit the shape of the cap, nor does the claim require the cap be incapable of being reinserted. Examiner notes Applicant mischaracterizes the restriction requirement, stating the grounds for election were based on using another type of injection molding process. Examiner notes the election was based on forming the cap in a materially different process, i.e. placing the cover in the cap manually, and not by a different type of injection molding process.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 1-4 drawn to an invention nonelected with traverse on 17 August 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 5-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claim limitation, "and wherein the edge region (6) remains integral with the cover element (5) upon removal of the cover element (5)," comprises new matter. While the Specification details the edge region is permanently deformed upon removal, such a description does not necessarily enable the edge

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region remaining integral with the cover element. The edge region of the cover element of Heyn '424, for example, is permanently deformed as well, in that it is fractured off of the cover element.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 5-7 and 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Amschlinger et al. US 6,868,978.

Amschlinger '978 teaches a closure for transfusion bottles, comprising a metallic cap (3), a plastic cover (2), and a sealing element (8) in contact with the bottom surface of the cap, whereby the cover has fingers (24) which extend under the cap to form a mechanical interlock, and which remain integral with the cover upon removal. The edge of the cover, which is gripped to remove the cover from the cap, extends transversely downward to the plane of the opening.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen US 4,501,372 in view of Kranzhoff US 3,278,063.

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Hansen '785 teaches a tear-open closure for a container, comprising a cap portion (2) with at least one opening and an elastic, penetrable sealing layer (3) covered by a cover element (18) and (19).

Hansen '785 does not teach the cover releasably connected to the container by an interlock encircling the opening.

Kranzhoff '063 teaches it is known to place a cover element (2) in a cap (1), by an interlock surrounding the opening at (3), and whereby removal of the cover from the cap will keep the cover edge region intact. See col. 4, lines 16-27, disclosing the removal of the cover from the cap in one piece.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Hansen '785, providing the cover element of Kranzhoff '063, because such is a mechanical expedient closure drawn to solving the same problem, and will function equally well as the cap of Hansen '785.

Regarding claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable closures of Hansen '372, forming them of a soft plastic, such as a duroplastic, motivated by the benefit of promoting fracture of allowing easy removal of the cover taught by Kranzhoff '063. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen US 4,501,372 in view of Kranzhoff US 3,278,063, as applied above to claim 5, in further view of Howard et al. US 4,746,017.

Hansen '372 does not teach the gripping tabs extending at right angles and centrally located.

Howard '017 teaches a removable cover disk (28) with a tab (29) extending vertically and centrally from the disk, for removal of the disk portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure gripping tabs of Hansen '372, providing the centrally located and vertically-

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extending tab taught by Howard '017, motivated by the benefit of providing an equivalent means of allowing a user to remove the closure to expose the pierceable sealing layer.

Response to Arguments

10. Applicant's arguments with respect to claims 5-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER